



January 25, 2001

Ms. Margaret Turner
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2001-0300

Dear Ms. Turner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143524.

The Conroe Police Department (the "department") received a written request for "any and all dispatch calls" pertaining to a certain address. You have submitted to this office as responsive to the request three offense reports, which contain information that you contend is excepted from required public disclosure under sections 552.101 and 552.130 of the Government Code.

We note at the outset that each of the offense reports constitutes a "completed report" specifically made public under section 552.022(a)(1) except to the extent the reports are made confidential by other law or come under the protection of the "law-enforcement" exception, section 552.108 of the Government Code. Because your arguments for non-disclosure invoke provisions of law that make information confidential, we will consider your claims under sections 552.101 and 552.130.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Exhibit A consists of an offense report pertaining to the alleged sexual assault of a child. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Exhibit A comes within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the requested documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold Exhibit A in its entirety pursuant to section 552.101 of the Government Code as information made confidential by law.

Exhibit B is an offense report pertaining to an offense allegedly committed by a juvenile in October, 1994. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided as follows:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Despite the repeal of section 51.14(d), law-enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential

under that section.¹ Because Exhibit B pertains to juvenile conduct that occurred prior to January 1, 1996, we conclude that this offense report is governed by section 51.14(d) of the Family Code and that the department must withhold this record in its entirety. *See also* Open Records Decision No. 181 (1977).

Finally, you contend that a small portion of Exhibit C is protected from public disclosure pursuant to common law privacy. Section 552.101 protects information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982). After reviewing the information at issue, we agree that the information you have redacted is protected by common law privacy and therefore must be withheld pursuant to section 552.101.

You also contend that a driver's license number contained in Exhibit C must be withheld from the public pursuant to section 552.130(a)(1) of the Government Code, which requires that the department withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold from Exhibit C all Texas driver's license numbers pursuant to section 552.130(a)(1) of the Government Code.

In summary, the department must withhold Exhibits A and B in their entirety pursuant to section 552.101 of the Government Code in conjunction with sections 261.201 and 51.14(d) of the Family Code, respectively. The department must also withhold the information you have redacted from Exhibit C pursuant to the common law right of privacy and section 552.130(a)(1) of the Government Code.

¹See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Gen. Laws 2591 (Vernon).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

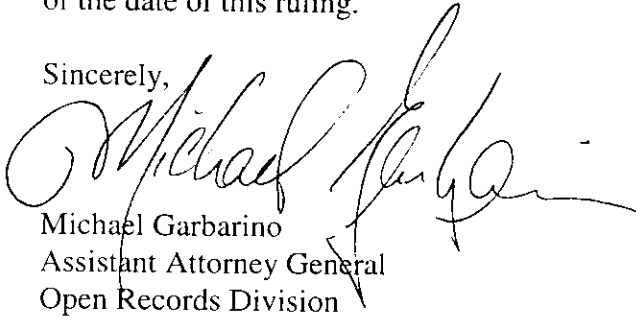
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", is written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/seg

Ref: ID# 143524

Encl. Submitted documents

cc: Mr. Dan A. Mobley
Mobley Investigations
314 Cochran
Conroe, Texas 77301
(w/o enclosures)